

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)
)
)
v.) CASE NO. DNCW3:10CR102-01
)
)(Financial Litigation Unit)
JERRY W. HOLMES,)
)
and)
)
IBM PERSONAL PENSION PLAN,)
)
 Garnishee.)

ORDER OF CONTINUING GARNISHMENT

THIS MATTER is before the Court on the Answer of IBM Personal Pension Plan as Garnishee (Docket #63). In addition to the Garnishee's response, the Court has received and reviewed the letter/objection filed by Defendant (Docket #64) and the Government's response (Docket #66).

On June 8, 2011, U.S. District Judge Max O. Cogburn, Jr. sentenced the Defendant to thirty-three months in prison for his convictions of Conspiracy to Defraud the United States, in violation of 18 U.S.C. § 371, and Attempt to Evade Tax, in violation of 26 U.S.C. § 7201. Judgment in the criminal case was filed on June 17, 2011 (Docket No. 48). As part of that Judgment, the Defendant was ordered to pay an assessment of \$200 and restitution of \$2,564,450.31 to the victims of the crimes. *Id.*

On August 22, 2011, the Court entered a Writ of Continuing Garnishment ("Writ") (Docket No. 59) to Garnishee, IBM Personal Pension Plan ("Garnishee"). The United States is entitled to a garnishment of 100% of Defendant's periodic pension distributions, net of any mandatory tax withholdings, and has satisfied the prerequisites set forth in 15 U.S.C. § 1673. Defendant and Garnishee were individually served with the Writ on August 26, 2011. Garnishee filed an Answer

on September 14, 2011 (Docket No. 63) stating that at the time of the service of the Writ, Garnishee anticipates owing Defendant a monthly annuity in the amount of \$1,920.39. Defendant filed an objection to the garnishment action and a request for a hearing on September 14, 2011 (Docket No. 64). The United States filed a response to Defendant's objection on September 23, 2011 (Docket No. 66). The Court finds Defendant's objections to be without merit and the same are overruled. A hearing is not necessary in this matter, nor is it appropriate pursuant to the provisions of 28 U.S.C. § 3202(d).

IT IS THEREFORE ORDERED that an Order of Continuing Garnishment is hereby ENTERED in the amount of \$2,564,650.31 computed through August 22, 2011. Garnishee shall pay the United States 100% of Defendant's periodic pension distributions which remain after all deductions required by law have been withheld. Garnishee shall continue said payments until the debt to the United States is paid in full or until further order of this Court.

Payments shall be made payable to the Clerk of the United States District Court and mailed to the Clerk of the United States District Court, 401 West Trade Street, Charlotte, NC 28202. In order to ensure that each payment is credited properly, the following should be included on each check: Court Number DNCW3:10CR102-01.

The United States will submit this debt to the Treasury for inclusion in the Treasury Offset Program. Under this program, any federal payment the Defendant would normally receive may be offset and applied to this debt.

SO ORDERED.

Signed: September 29, 2011



David S. Cayer

United States Magistrate Judge

